



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 07-16
BILL 55 (2006)

A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT HEEIA-KANEOHE-MAUNAWILI, OAHU, HAWAII
(AMENDING PORTION OF ZONING MAP NO. 22), ORDINANCE NO. 86-123

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION I. Land situated at Heeia-Kaneohe-Maunawili, Oahu, Hawaii, hereinafter described, is hereby rezoned from P-2 General Preservation District to R-7.5 Residential District with a 25-feet height limit. The boundaries and area of said Districts shall be described as shown on the map attached hereto, marked Exhibit "A" and made a part hereof, and further identified as Tax Map Key 4-6-029:091.

SECTION II. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.

Dpp06z-1.b06



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HONOLULU, HAWAII

ORDINANCE 07-16

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SECTION II. This ordinance shall take effect upon its approval.

INTRODUCED BY:

[Handwritten signature]

DATE OF INTRODUCTIONS:

Councilmembers

JUN 14 2006

Honolulu, Hawaii

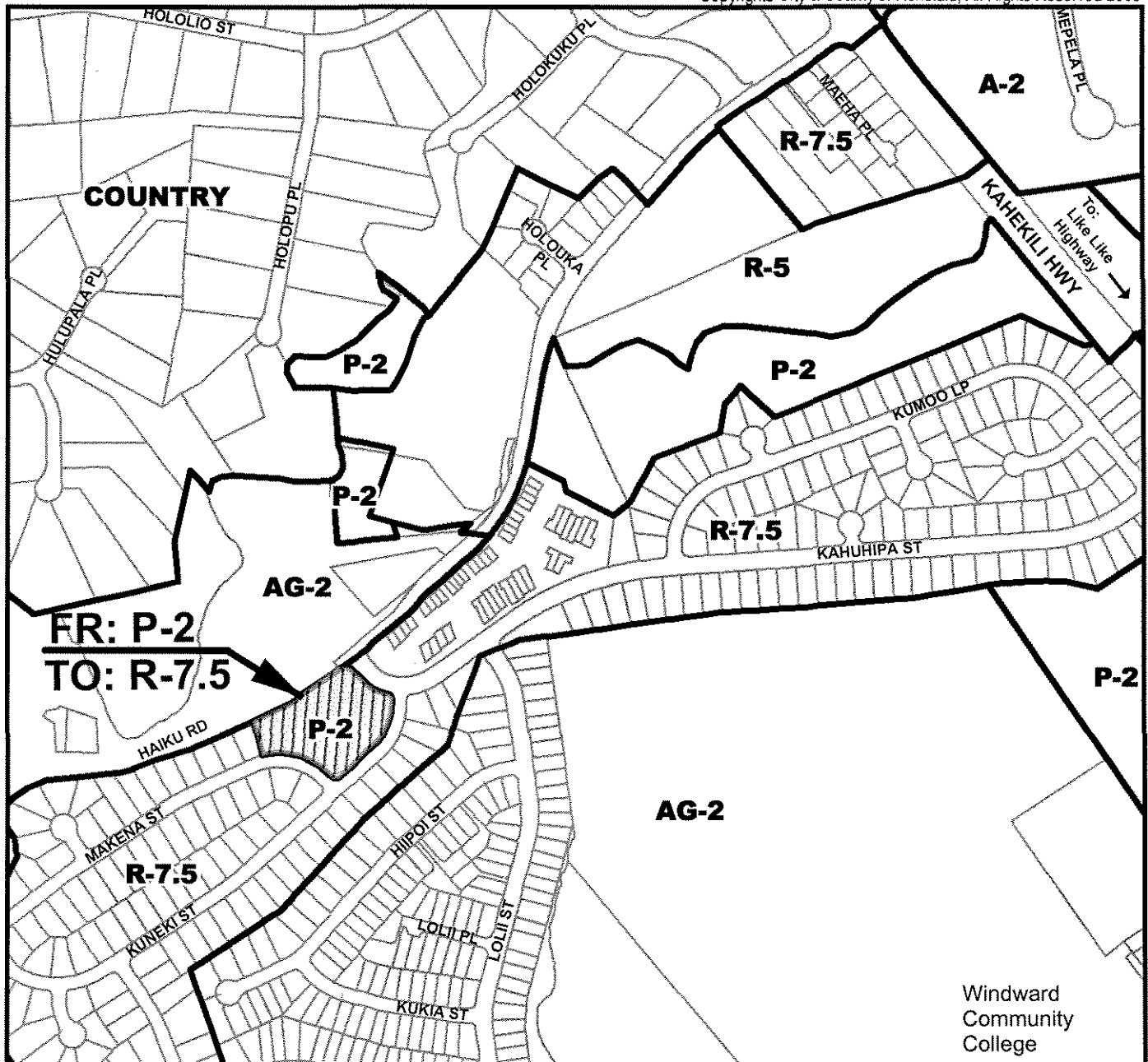
APPROVED AS TO FORM AND LEGALITY:

[Handwritten signature]

Deputy Corporation Counsel

APPROVED this _____ day of _____, ²⁰⁰⁷~~2006~~.

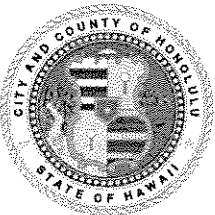
MUFI HANEMANN, MAYOR
City and County of Honolulu



PORTION OF
ZONING MAP NO. 22
HEEIA-KANEOHE-MAUNAWILI



0 250 500
1" = 500 FT.



APPLICANT:	KAMEHAMEHA SCHOOLS
TAX MAP KEY(S):	4-6-029:091
FOLDER NO. :	2006/Z-1
LAND AREA:	APPROX. 2.024 ACRES
PREPARED BY:	DEPARTMENT OF PLANNING & PERMITTING CITY AND COUNTY OF HONOLULU
PUBLIC HEARING:	PLANNING COMMISSION
	CITY COUNCIL

ORD. NO. 07-16

MAY 03 2006

12/13/06

2006/Z-1

EFF. DATE: MAY 17 2007

EXHIBIT A

BILL 55 (2006)

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was
recorded as follows:

DOCUMENT Doc 3593063
CTN 411,851
DATE APR 25, 2007 TIME 10:00 AM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ☐ OR PICKUP ☐ :

KAMEHAMEHA SCHOOLS
567 SOUTH KING STREET, SUITE 310
HONOLULU, HAWAII 96813
ATTENTION: LEGAL DEPARTMENT

TYPE OF DOCUMENT:

(TOTAL PAGES: 7)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

PARTIES TO DOCUMENT:

JAMES DOUGLAS KEAUFHOU ING, CHARLES NAINOA THOMPSON, DIANE JOYCE PLOTTS,
ROBERT KALANI UICHI KIHUNE, AND CORBETT AARON KAMOHAIKIOKALANI KALAMA,
solely as TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP

TAX MAP KEY FOR PROPERTY: (1) 4-6-029-091

UNILATERAL AGREEMENT
AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (this "Unilateral Agreement" or this "Declaration") is made this
24th day of April, 2007, by JAMES DOUGLAS KEAUFHOU ING,
CHARLES NAINOA THOMPSON, DIANE JOYCE PLOTTS, ROBERT KALANI UICHI
KIHUNE and CORBETT AARON KAMOHAIKIOKALANI KALAMA, solely as TRUSTEES
OF THE ESTATE OF BERNICE PAUHI BISHOP, whose address is 567 South King Street,
Suite 200, Honolulu, Hawaii 96813 (collectively, the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, consisting of approximately 88,174 square feet, described as Tax Map Key No. (1) 4-6-029-091 and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to use a portion of the Land for Educational Purposes (as defined herein); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from P-2 General Preservation District to R-7.5 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 55 (2006), was held by the Council on December 13, 2006; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 138 that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance") provided the Rezoning Ordinance becomes effective no later than August 1, 2007;

NOW, THEREFORE, the Declarant hereby covenants and declares as follows:

1. If at any time Declarant uses or permits the use of the Land for any use other than Educational Purposes (as hereinafter defined) and/or open space, Declarant understands and agrees that the City may, at any time thereafter, rezone the Land from R-7.5 Residential District to P-2 General Preservation District. Declarant, for itself and its successors and assigns: (a) expressly acknowledges that it has no right to rely on the zone change for any use on the Land other than Educational Purposes and/or open space, and (b) waives and releases any claim against the City for estoppel, vested rights, and/or money damages resulting from any downzoning of the Land pursuant to this condition. Further, following any downzoning of the Land pursuant to this condition, any use or uses that caused the downzoning shall not be entitled to continue under the nonconforming use provisions of the LUO. As used in this Declaration, the term "Educational Purposes" means a day-care facility, as that term is defined in the LUO, or a facility that provides knowledge or training to students who do not reside on the premises and that is an allowable use (with or without additional permits such as a conditional use permit) on the Land under the LUO. "Educational Purposes" does not include a group living facility, as that term is defined in the LUO.

2. Prior to the issuance of any grading or building permits related to the construction of any improvements on the Land (the "Improvements"), the Declarant shall provide to the State of Hawaii Department of Health (the "DOH") a Phase I Environmental Site Assessment Study (the "Phase I") acceptable to the DOH. If the Phase I shows that a release of petroleum or hazardous substances (including arsenic, pollutants or contaminants) occurred on the Land, the Declarant shall provide to the DOH a soil and groundwater sampling plan acceptable to the DOH.

3. Prior to the issuance of any building permits for the Improvements, the Declarant shall provide to the State Department of Transportation's (the "DOT") Highways Division Traffic Branch, for its review and approval, a queue analysis of the storage lane capacity of the northbound left-turn storage lanes on Kahekili Highway at the Haiku Road intersection and at the Kahuhipa Street intersection. If the DOT determines that such storage lanes do not have adequate capacity, the Declarant shall correct any such deficiencies before the issuance of any certificate of occupancy for the Improvements.

4. Prior to the issuance of any grading or building permits related to the construction of the Improvements, the Declarant shall submit to the DOT, for its review and approval, a report identifying and discussing and/or explaining the traffic signal timing adjustments used in the Declarant's Traffic Impact Assessment Report dated January 6, 2006, and, in particular, the impact on the signal timing coordination and sequencing along Kahekili Highway. If the DOT determines there is a problem with the analysis, the Declarant shall correct such issues prior to the issuance of any grading or building permits.

5. The Declarant shall submit an annual written status report to the City Department of Planning and Permitting (the "DPP") documenting any satisfaction of and/or describing its progress towards complying with the conditions of approval for the zone change set forth in Sections 2, 3 and 4 above. Declarant shall submit such status report by December 31st of each year until such time that the DPP determines that the conditions set forth in Sections 2, 3 and 4 have been satisfied.

6. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Improvements comply with all applicable LUO and other governmental provisions and requirements.

7. In the event of noncompliance with any of the conditions set forth herein, the DPP shall inform the Council and may initiate action to rezone the Land or seek civil enforcement or take appropriate action to terminate or stop construction of the Improvements until the applicable conditions are met.

8. Failure to fulfill any of the conditions set forth herein may be grounds for revocation of the permits issued on the basis of the Rezoning Ordinance and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

9. Upon any rezoning of the Land to a designation that will not permit the use of the Land for Educational Purposes (and specifically including use of the Land for a private preschool as the primary use), whether or not such rezoning is voluntarily initiated by the Declarant or effectuated pursuant to the terms of this Declaration including without limitation Section 1 hereof, this Declaration and all rights and obligations hereunder shall automatically be terminated and, in any such instance, Declarant may file a notice of such termination of this Declaration, which notice shall attach a certified copy of the ordinance rezoning the Land to the designation that will not permit use for such Educational Purposes.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in Sections 2, 3, 4 and/or 5 of this Unilateral Agreement, the DPP may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or their successors and assigns may file a request to rezone the Land and/or a petition with the DPP for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

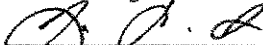
This Unilateral Agreement has been approved or executed by the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this Unilateral Agreement shall be imposed or assessed against said Trustees in their individual capacities.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

Approved as to Content, Authority,
and Compliance with KS Policy:



Director/Manager



Vice President

Approved as to Form:



Legal Group



Retained Counsel Chun Rair & Yoshimoto LLP

TRUSTEES OF THE ESTATE OF
BERNICE PAUAAHI BISHOP, as
aforesaid


ROBERT KALANI UICHI KIHUNE


DIANE JOYCE PLOTTS


Corbett Aaron Kamohaiokalani Kalama

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this APR 24 2007 day of 2007, before me personally appeared ROBERT KALANI UICHI KIHUNE, DIANE JOYCE PLOTTS and Corbett Aaron Kamohaikioalani Kalama, three of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid, to me personally known to be the persons described in the foregoing instrument and who did say that such persons severally executed the foregoing instrument as their free act and deed as the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

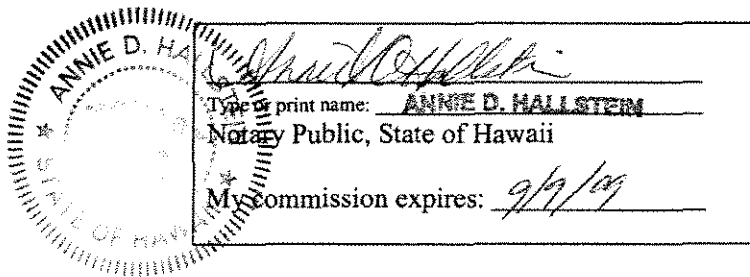


EXHIBIT A

All of that certain parcel of land situate at Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1, area 88,174 square feet, more or less, BLOCK "B" as shown on Map 80, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1100 of the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased;

Being the land(s) described in Transfer Certificate of Title No. 411,851 issued to TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

07-16

ORDINANCE

BILL 55 (2006)

Introduced: 6/14/06 By: DONOVAN DELA CRUZ (BY REQUEST)

Committee: ZONING


Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT HEEIA-KANEOHE-MAUNAWILI, OAHU, HAWAII (AMENDING PORTION OF ZONING MAP NO. 22), ORDINANCE NO. 86-123.

Links: [BILL 55 \(2006\)](#)
[D-568](#)
[CR-362](#)
[CR-475](#)

COUNCIL	7/19/06	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
ZONING	7/25/06	CR-362 – 120 DAY EXTENSION OF TIME REPORTED OUT OF COMMITTEE FOR APPROVAL. (DEADLINE: 9/6/06, NEW DEADLINE: 1/4/07)				
COUNCIL	8/16/06	CR-362 ADOPTED.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
ZONING	8/22/06	BILL DEFERRED IN COMMITTEE.				
ZONING	11/28/06	CR-475 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING. (DEADLINE: 1/4/07) (IF EXTENSION OF TIME IS GRANTED, NEW DEADLINE: 5/4/07)				
PUBLISH	12/3/06	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-BULLETIN.				
COUNCIL/PUBLIC HEARING	12/13/06	BILL PASSED SECOND READING, CR-475 ADOPTED, PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE.				
	APO Y	CACHOLA E	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
PUBLISH	12/16/06	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-BULLETIN.				
ZONING	02/06/07	BILL DEFERRED IN COMMITTEE.				
ZONING	04/17/07	CR-138 (2007) – BILL REPORTED OUT COMMITTEE FOR PASSAGE ON THIRD READING. (DEADLINE FOR COUNCIL ACTION: 05/04/07)				
COUNCIL	05/02/07	BILL PASSED THIRD READING AND CR-138 (2007) ADOPTED.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL N	OKINO Y	TAM Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


DENISE C. DE COSTA, CITY CLERK


BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER

07-16

ORDINANCE NO. 07-16

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

I hereby certify that on May 3, 2007, Bill 55 (2006) was presented to the Honorable Mufi Hannemann, Mayor of the City and County of Honolulu, for his approval or otherwise; and that on May 17, 2007, the Mayor returned said Bill without his signature; therefore, pursuant to Section 3-203 of the Revised Charter of Honolulu, said Bill 55 (2006) became a duly enacted ordinance on May 17, 2007.

Dated, Honolulu, State of Hawaii, this 17th day of May, 2007.

CITY COUNCIL

By 
BARBARA MARSHALL

Chair and Presiding Officer

Please note Misc Com. # 770 (M-0770)

ATTEST:



DENISE C. DE COSTA
City Clerk